

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Oretha Beh *et al.*,

Plaintiffs,

v.

Community Care Companions Inc. *et al.*,

Defendants.

**Decision and Order
(Amended)**

19-CV-1417 (JLS)

This Decision and Order will address scheduling and discovery that will be necessary for plaintiffs' anticipated motion for class certification. *See* Local Civ. R. 23(c) ("The initial [scheduling] order may address only discovery relevant to the motion for class certification, with a further order to issue after a determination on the certification motion."). On May 13 and May 21, 2020, the parties submitted joint letters that contained proposals for scheduling. (Dkt. Nos. 181, 190.) The parties mostly are in agreement about how to proceed but have a few key differences regarding how to select a sample of plaintiffs for pre-certification discovery. After reviewing the parties' joint reports, the Court has decided that pre-certification discovery will proceed as follows.

1) *Sample Selection.* From the plaintiffs who filed opt-in consent forms as of 2:00 PM EDT on May 22, 2020,¹ the parties will select 92 individuals who can be served with interrogatories under Rule 33 and document requests under Rule 34. To strike a balance between plaintiffs' desire for random selection and defendants' desire for direct selection, the selection of the 92 individuals will proceed as follows. Each side will select 20 individuals. The remaining 52 individuals will be selected at random. Of the 92 individuals chosen, the parties will select 40 who can be deposed

¹ As part of the Memorial Day holiday weekend, the Buffalo courthouse closed administratively at this time.

under Rule 30. Each side will select 10 individuals for depositions. The remaining 20 individuals will be selected at random. *See, e.g., Scott v. Chipotle Mexican Grill, Inc.*, 300 F.R.D. 188, 192 (S.D.N.Y. 2014) (hybrid method of sample selection).

The Court hereby appoints the District's ADR administrator, Amanda G. Williams, Esq., to conduct the random selections in coordination with the parties. The parties will reach out to Ms. Williams as soon as possible to address any logistical details for the selection process. All selections will be completed on or before 5:00 PM EDT on June 12, 2020.

2) *Discovery.* Once the group of 92 individuals and the group of 40 individuals have been chosen, discovery pertaining to these two sets of individuals may begin immediately. The numbers 92 and 40 represent the maximum number of individuals who will be subjected to interrogatories, document requests, and depositions; the parties are not obligated to conduct discovery with all of the individuals. As the parties have requested, paper discovery must occur in parallel. That is to say, if the parties conduct Rule 33 and Rule 34 discovery against fewer than all 92 individuals then they have to target the same individuals in their requests and responses. Per Rule 33(a)(1), no person in this process will be served with more than eight written interrogatories including all discrete subparts.

Any discovery pertaining to class certification but not directed specifically at the two groups to be selected is not affected by Section 1 or Section 2 of this Order. That discovery will continue as the parties have arranged, subject to the deadline in Section 3.

3) *Deadlines.* As the parties have agreed, all pre-certification discovery will conclude on or before October 19, 2020. The anticipated motion for class certification will be filed on or before

December 18, 2020. Defendants will file any responding papers on or before January 19, 2021.

Plaintiffs will file any reply papers on or before February 5, 2021. If the Court deems oral argument necessary then it will schedule that proceeding at a later time.

SO ORDERED.

/s/ Hugh B. Scott

Hon. Hugh B. Scott
United States Magistrate Judge

DATED: May 27, 2020